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CONCORD, N.H.

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March 26

Honorable Chairman Adams  
Governor of New Hampshire  
State House  
Concord, New Hampshire

Dear Governor Adams:

You have inquired if a general sales tax may be applied constitutionally to gasoline and other motor fuels properly subject to various "use" taxes, such as use of public highways, aeronautical facilities, etc.

This question has previously been considered by the Supreme Court of New Hampshire and answered negatively. Opinion of the Justices, 88 N.H. 500. The Court there held that since gasoline and other motor fuels were already subjects of state taxation, it would be a violation of the principle of equality to levy a tax on the sale transaction in addition to the charge for use. That decision was rendered prior to the insertion in 1933 of Art. 6-a, Part Second, of our State Constitution, but the Court's conclusion is in no way affected by that article.

However, there appears to be no constitutional bar to the imposition of a sales tax upon gasoline or motor fuels which are not otherwise subject to tax. Under existing procedure a tax is paid upon all motor fuels by the "distributor" or "user" and refunds are later made if such fuels are not used for taxable purposes. See chapter 65, Laws of 1943. It would appear that fuels on which refunds are thus paid could properly be the subject of a general sales tax, and administrative procedure devised for the collection thereof. The constitutional limitation imposed by Art. 6-a, Part Second of our Constitution as to the use of revenue obtained from tolls, charges or taxes on motor vehicle fuels applies only to such levies as are related "to the operation of motor vehicles or the sale or consumption of motor vehicle fuels". We construe the constitutional limitation as being applicable only to funds derived from fuels used in motor vehicle highway travel. This construction is supported by the Supreme Court's views on the establishment of the aeronautical fund. See chapter 281, Laws of 1947; Opinion of the Justices, 94 N.H. 613.

Respectfully yours,

Gordon M. Tiffany  
Attorney General

WSG:HP